

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**IN RE: REALPAGE, INC., RENTAL  
SOFTWARE ANTITRUST LITIGATION  
(NO. II)**

**Case No. 3:23-md-3071**

**MDL No. 3071**

**Chief Judge Waverly D. Crenshaw, Jr.**

**This Document Relates to:**

**3:22-cv-01082**

**3:23-cv-00332**

**3:23-cv-00357**

**3:23-cv-00378**

**3:23-cv-00410**

**3:23-cv-00413**

**3:23-cv-00552**

**3:23-cv-00742**

**3:23-cv-00979**

**JOINT REPORT CONCERNING RULE 26(f) CONFERENCE**

On January 25 and 29, 2024, counsel for Plaintiffs and the undersigned Defendants<sup>1</sup> (the “Parties”) participated in the meetings required by Fed. R. Civ. P. 26(f) and this Court’s instructions at the January 4, 2024 telephonic conference. During the January 25 and 29 meetings, the Parties discussed case management planning and a discovery plan, including issues related to electronic discovery, a protective order, expert discovery, privilege issues, and a deposition protocol. The Rule 26(f) conference in this case is scheduled for February 16, 2024, at 1:00 p.m. The Parties hereby submit the following report to assist the Court in identifying issues where the Parties are in agreement and where the Court’s guidance is respectfully requested.

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<sup>1</sup> Defendants Prometheus Real Estate Group, Inc., Rose Associates, Inc., Sares Regis Group Commercial, Inc. and CONTI Texas Organization Inc., d/b/a CONTI Capital do not join this report, due to the pendency of their personal jurisdiction motion to dismiss and the subsequent instructions from the Court to further brief these issues. *See* Dkt. 701, 712.

## **I. Pending Motions**

The Court's Omnibus Order, and corresponding Memorandum Opinions, resolved most pending Rule 12 motions filed by Defendants in this matter. Dkt. 685-691. After the Court issued its Omnibus Order, only two Rule 12 motions remained: Defendant Apartment Income REIT Corporation's ("AIR") Renewed Motion to Dismiss Plaintiffs' Second Amended Consolidated Class Action Complaint (Dkt. 695), and certain Defendants' Motion to Dismiss Tennessee Actions for Lack of Personal Jurisdiction and Improper Venue. Dkt. 583. With respect to the former, Plaintiffs and AIR have reached a settlement in principle, and AIR has withdrawn its motion without prejudice. Dkt. 715. With respect to the latter, Plaintiffs and the remaining Defendants who maintain that motion (CONTI Texas Organization Inc., d/b/a CONTI Capital, Prometheus Real Estate Group, Inc., Rose Associates, Inc., and Sares Regis Group Commercial, Inc.) are submitting additional briefing today concerning the Court's ability to transfer actions under 28 U.S.C. § 1631. Dkt. 712.

## **II. Settlement and Mediation**

On February 2, 2024, Plaintiffs and Pinnacle Property Management Services, LLC ("Pinnacle") informed the Court that they had reached a settlement in principle. Dkt. 714. On February 5, 2024, Plaintiffs and AIR informed the Court that they had reached a settlement in principle. Dkt. 715. Plaintiffs are working closely with both Pinnacle and AIR to convert their term sheets into long-form settlement agreements to submit to the Court for preliminary approval.

Plaintiffs and a subset of Defendants engaged in a mediation with the assistance of Court-appointed mediator Clay Cogman on October 24, 2023. Plaintiffs and additional subsets of Defendants have scheduled two additional mediations for March 15, 2024 and April 8, 2024, with the assistance of Mr. Cogman and Court-appointed mediator the Honorable Layn Phillips.

Plaintiffs and certain Defendants also continue to engage in ongoing, bilateral settlement discussions.

### **III. Case Schedule and Discovery Limits**

The Parties have met and conferred repeatedly regarding a proposed case schedule and discovery limits. While the Parties have reached agreement on most issues, a few outstanding disputes remain. Attached as Exhibit 1 is Plaintiffs' proposed Case Management Order, and attached as Exhibit 2 is Defendants' proposed Case Management Order. Attached as Exhibit 3 is a chart comparing the Parties' proposals. The key areas of disagreement between the proposals are set forth in Appendix A.<sup>2</sup>

### **IV. Stipulated Discovery Orders**

The Parties have also met and conferred on numerous occasions regarding an order covering the production of electronically stored information ("ESI"), a Protective Order, a deposition protocol, a Rule 502 Order governing privilege issues, and an order governing expert discovery.

The Parties have reached agreement on the expert discovery order and the deposition protocol, and will file the stipulated orders before the February 16, 2024 Status Conference.

As to the ESI Protocol and the Protective Order, the Parties have worked together cooperatively and have largely reached agreement, but some outstanding disputes regarding specific provisions remain. Charts identifying the disputed provisions of the ESI Protocol and the Protective Order, and briefly describing the parties' positions, are attached hereto as Appendices

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<sup>2</sup> Plaintiffs and Defendants may have an additional disagreement concerning when experts should, and the number of times an expert may, be deposed. Given the overarching dispute concerning the expert discovery schedule discussed in Appendix A, the Parties have agreed to defer this dispute until the Court sets a schedule, after which they will meet and confer and attempt to resolve the dispute without Court intervention.

B (ESI Protocol) and C (Protective Order). The Parties respectfully request that the Court resolve these disputed issues, after which the Parties will submit final versions of stipulated orders. The Parties will be prepared to discuss their respective positions at the Status Conference. Regarding the 502(d) Order, the Parties are still negotiating and expect that they will be able to narrow the outstanding areas of dispute. The Parties will continue to meet and confer on the 502(d) Order and will update the Court on their progress in advance of the February 16, 2024 conference.

**V. Other Issues**

**A. Preservation Notices**

**PLAINTIFFS:**

Plaintiffs' counsel instructed each Plaintiff of their obligations to preserve documents at the time that each Plaintiff retained counsel.

**DEFENDANTS:**

As requested by the Court, and without waiving any privilege or protection against discovery, including the attorney-client privilege or work product protection, the undersigned Defendants state that they have issued preservation notices covering appropriate individuals and forms of communication. The undersigned Defendants issued their initial preservation notices on the dates in the chart attached as Appendix D.

**B. Anticipated Fact Discovery Hot Spots**

**PLAINTIFFS:**

Plaintiffs anticipate that timely receipt of document productions, which are likely to be voluminous, will be a key factor in moving this case forward. Upon receiving initial disclosures, Plaintiffs are committed to working cooperatively with Defendants to quickly identify custodians for document production. Plaintiffs are concerned that an information asymmetry may make it difficult to identify key individuals and search terms, especially given that each defendant may

have many individuals responsible for RMS usage and terms unique to each company. This is why Plaintiffs have taken steps to frontload certain discovery issues, by 1) serving document and structured data requests in advance of the 26(f) conference, giving Defendants extra time to review and respond (as discussed further below, in Appendix A), and 2) seeking some targeted additional initial discovery (i.e., production of any documents that have previously been produced to the government and expanded disclosures of key individuals) early in the discovery process to streamline future negotiations.

Plaintiffs also anticipate that structured data discovery will be complex, especially given the number of Defendants, but are hopeful that RealPage will help to facilitate data production. In building the schedule, Plaintiffs were mindful that they require a complete set of structured data with enough lead time before class certification to ensure that the Court has a strong basis for consideration of Plaintiffs' motion to certify a class. Plaintiffs believe that the Parties have agreed to such a schedule, with interim deadlines to ensure timely completion.

Plaintiffs also anticipate that the orderly scheduling of depositions may be problematic unless the parties agree to a structured process to promptly identify dates that work for witnesses and counsel alike.

#### **DEFENDANTS:**

The undersigned Defendants do not anticipate any particular discovery disputes, other than those that this report identifies. Given the size and complexity of this case, additional disputes may arise despite the Parties' best efforts to avoid them. If and when additional disputes arise, the undersigned Defendants intend to work in good faith with Plaintiffs to propose reasonable compromises and avoid expending judicial resources to resolve the disputes.

**C. Discovery Vendors That Will Be Used in This Case**

**PLAINTIFFS:**

Plaintiffs will use CS Disco, Inc. as their discovery vendor and Digital Evidence Group, L.L.C., as their vendor for court reporting services.

**DEFENDANTS:**

Defendants have engaged the following discovery vendors to date: Array, Berkeley Research Group, Cimplifi, Consilio, DISCO, Edge Information Solutions Inc., d/b/a HG Edge, Epiq, Gulfstream Legal Group, Innovative Driven, KLDISCOVERY, Lineal, Nextra Solutions, and TransPerfect.

**D. Terminating Unnamed Plaintiff Cases**

On September 27, 2023, the Parties filed a stipulation of dismissal for certain plaintiffs who were not named in the Second Amended Consolidated Class Action Complaint. Dkt. 554. On October 4, 2023, pursuant to the Parties' stipulation, the Court dismissed forty-five (45) plaintiffs without prejudice from the MDL who were not named in the operative complaints (the "Unnamed Plaintiffs"). Dkt. 563. This dismissal affected twenty-nine (29) actions, which have not yet been administratively terminated. The Parties respectfully request that the Court administratively terminate the dockets of the following cases consistent with its October 4, 2023 order, including:

<b>Case Name</b>	<b>M.D. Tenn. Case No.</b>
1. <i>Alvarez et al. v. RealPage Inc., et al.</i>	3:23-cv-00331
2. <i>Armas et al. v. RealPage Inc., et al.</i>	3:23-cv-00333
3. <i>Bauman v. RealPage, Inc. et al.</i>	3:23-cv-00326
4. <i>Bertlshofer v. RealPage Incorporated et al.</i>	3:23-cv-00377
5. <i>Blosser v. RealPage, Inc., et al.</i>	3:23-cv-00445
6. <i>Boelens v. RealPage Inc et al.</i>	3:23-cv-00338
7. <i>Carter v. RealPage, Inc., et al.</i>	3:23-cv-00411
8. <i>Corradino et al. v. RealPage Inc., et al.</i>	3:23-cv-00379
9. <i>Crook v. RealPage Inc., et al.</i>	3:23-cv-00387
10. <i>Enders v. RealPage Inc., et al.</i>	3:23-cv-00390
11. <i>Godfrey v. RealPage Inc., et al.</i>	3:23-cv-00344

12. <i>Hardie et al. v. RealPage Inc., et al.</i>	3:23-cv-00388
13. <i>Johnson v. RealPage Inc., et al.</i>	3:23-cv-00334
14. <i>Kramer v. RealPage Inc., et al.</i>	3:23-cv-00389
15. <i>Lai Cheong v. RealPage, Inc., et al.</i>	3:23-cv-00416
16. <i>Mackie v. RealPage Inc., et al.</i>	3:23-cv-00358
17. <i>Marchetti v. RealPage Inc., et al.</i>	3:23-cv-00380
18. <i>Moore v. The Irvine Co., LLC, et al.</i>	3:23-cv-00339
19. <i>Morgan et al. v. RealPage Inc., et al.</i>	3:23-cv-00330
20. <i>Navarro v. RealPage Inc., et al.</i>	3:23-cv-00329
21. <i>Pham et al. v. RealPage Inc., et al.</i>	3:23-cv-00337
22. <i>Precht v. RealPage Inc., et al.</i>	3:23-cv-00412
23. <i>Saloman et al. v. RealPage Inc., et al.</i>	3:23-cv-00381
24. <i>Schmidig v. RealPage Inc., et al.</i>	3:23-cv-00391
25. <i>Silverman et al. v. RealPage Inc., et al.</i>	3:23-cv-00335
26. <i>Spencer v. RealPage Inc., et al.</i>	3:23-cv-00415
27. <i>Weller v. RealPage Inc., et al.</i>	3:23-cv-00414
28. <i>Zhovmiruk v. RealPage Inc., et al.</i>	3:23-cv-00345
29. <i>Kramer v. RealPage Inc., et al.</i>	3:23-cv-00356

In addition, these 29 actions are now no longer part of the MDL. In light of JPML Rule 10.1, both Plaintiffs and Defendants respectfully request that the Panel be notified about the dismissal of the Unnamed Plaintiffs and the termination of those underlying actions.

Dated: February 9, 2024

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

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